Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 17th October, 2002 (Asvina 25, 1924)

SERIES II No. 29

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

CL/Pub-Awards/98/160

The following Awards dated 26-10-1998 in Reference No. IT/24/89 given by the Industrial Tribunal, Panaji--Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex Officio Joint Secretary (Labour).

Panaji, 8th January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/24/89

Workman
Shri Francisco G. Martins and
Shri Pramod Shirsaikar,
Rep. by the President,
The Newspaper and Press Employees Union,
Betim, Bardez Goa. — Workmen/Party I

V/s

M/s Gomantak Private Limited,
Panaji-Goa. — Employer/Party II

Workmen/Party I represented by Shri N. J. Rebello
Employer/Party II represented by Shri D. P. Sinha

Dated: 26-10-98

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 28th March, 1989 bearing No. 28/64/88-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the two workmen Shri Francisco G. Martins, Assistant Foreman and Shri Pramod Shirsaikar, Compositor, are justified in demanding reinstatement inspite of a memorandum of settlement under Sec.12(3) of the Industrial Disputes Act, 1947 arrived at between the management of M/s Gomantak Private Limited, Panaji and the confederation committee of Goa Union of Journalists and Newspaper and Press Employees Union dated 29-3-1988?

If so, to what relief the workmen are entitled to?"

Subsequently, by corrigendum dated 2-3-1995 bearing No. 28/64/88-ILD, the date 29-3-1988 mentioned in the schedule of reference was corrected as 24-3-1988.

2. On receipt of the reference a case was registered under No. IT/24/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Party I (For short "Union") filed the statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the Union are that the party II (for short "Employer") is a newspaper establishment and publishes a Marathi daily namely "Gomantak" by employing journalists and non-journalists. That the workers of the employer have an union since the year 1967 known as Newspaper and Press Employees Union, which is the present union and

the employer has entered into several settlement with the union. That in the month of January 1985, the employer issued notices to the workmen informing that the management would start automation in the composing department of the press with effect from 1st March, 1985 and hence there would be reduction in the hand composing staff. That the employer engaged some outside persons for being trained in the operation of automatic machinery instead of giving an opportunity to its staff who had worked for several years. That the union raised an industrial dispute and after discussions in the Labour Commissioner's office, a settlement was arrived that there would not be retrenchment for the time being that however, in the month of September 1985 the management issued a notice in Form E as regards change of service condition proposed by the employer stating that since the trial photo-composing process had been successful, it would be introduced on regular basis from 1st October 1985. That the copy of the said notice was not served on the union but it was served on the minority union who was not representing the workmen. That the union raised an industrial dispute and subsequently, the employer allowed the workmen to continue to work. That thereafter, the employer entered into two settlements with the Union one dated 22-4-86 and the other dated 6-6-86, and inspite of the said settlements, the employer in conspiracy with the minority union of Journalists retrenched several workers in October 1987 without any intimation to the Union. That the Union was informed by the workmen of the employer that there would be retrenchment and that notices were kept ready to terminate the services of the workmen and hence the Union raised the dispute with the Labour Commissioner. That in the meantime, six out of the nine workmen whose services were terminated raised a seperate dispute through the minority Union and the management and the said minority Union with the assistance of the Labour Commissioner signed a settlement dated 23-4-88 by keeping out the Union. The Union contended that the said settlement which is a 2(p) settlement is not binding on the members of the Union and it binds only the signatories to the said settlements. That the employer illegally terminated the services of Shri Francisco Martins and Shri Pramod Shirsaikar, the Asst. Pressman and Compositor respectively with effect from 15th October, 1987 on the ground that their services had become redundant with the introduction of photo-composing. That after the termination of services of Shri Francis Martins and Shri Pramod Shirsaikar (for short "workmen") the employer employed new persons namely, S/Shri Santosh Akerkar, Suryakant Mahadik, Raju Mahadik, Rajendra Wafhdare and Bhagwan Shetty, to be trained in new process. The Union contended that the employer terminated the services of the workmen only to harass and victimise them for their trade union activities. The Union also contended that the workman Shri Francis Martins was terminated earlier in the year 1973 and on raising the dispute, an award was passed reinstating him with full back wages from 21-11-73. That to take the revenge, the employer terminated his services and employed one Mr. Parshuram in his place who is much junior to him. That by introducing photo composing redundancy could lead only in the composing section and not in the printing section. That the workman Shri Pramod Shirsaikar could have been trained in the new process when new persons were employed and trained. That, also there was ample scope for absorption of Shri Shirsaikar as the sweepers working in the establishment before and after the introduction of photo composing were promoted as peons and as such Shri Shirsaikar also could have been given an opportunity to take up some other job without affecting his wages. The Union therefore contended that the termination of the services of the workmen is illegal and unjustified and they are liable to be reinstated with full back wages with all benefits.

3. The employer filed the written statement which is at Exb. 3. The employer stated that it decided to introduce photo composing process on a trial basis in early 1985 and the management displayed a notice dated 23-1-1985 calling for applications from the employees working in the hand composing and other related sections, who wished to be trained in the new process and other sections. That thirteen workmen responded in writing while some others responded orally and hence they were put on "on-the-job" trial. That as it was found that the photo composing process was successful, a notice under Sec. 9A of the I. D. Act, 1947 in form "E" was displayed on 6-9-85 and the copies of the notice were sent to the President of Gomantak Employees Elected Action Committee (for short "Action Committee") and the General Secretary of the Goa Union of Journalists (for short "GUJ") besides the Government Authorities like Labour Commissioner and the Assistant Labour Commissioner, Panaji. That the Newspaper Employees Union (NEPU) raised a dispute by letter dated 25-9-85 as regards change of service conditions and apprehended retrenchment, and on 25-9-85 the said dispute ended as "no-dispute", that no dispute was raised by either the Action Committee of the general Secretary of the said Action Committee to whom the copies of the notice were sent but the Action Committee took up the matter for discussion with the management and no time solution on the modalities of retrenchment and ex-gratia payment was reached. That on introduction of photo composing precess w.e.f. October 1985, about 30 workers from hand composing and relating sections were found to be surplus. That out of the 30 workers, one resigned, seven retired in due course, thirteen were absorbed in various suitable posts and the remaining 9 workers could not be accommodated anywhere either due to unsuitability or failure to offer of training and were ultimately retrenched on 7-10-87 that is, nearly after 2 years of introduction of photo composing process. That during this period of 2 years the said 9 surplus workers were being relieved after marking their attendance as they have no work whatsoever for most of the time but they were paid their full wages and during this period of two years, none of the said workers voluntered to do any alternate

job like that of peon etc. That the employer by order dated 7-10-87 retrenched 9 workers namely, 6 compositors, 1 caster, 1 Asst. Pressman and 1 Baller and also issued cheques towards the payment of their legal dues. That the said workers refused to accept the retrenchment orders. That however, two workmen namely Mr. M. G. Parab and Mr. F. G. Martins who is the workman in the present reference accepted the dues without any protest. That the other 7 workmen including Mr. P. H. Shirsaikar who is the workman in the present reference, raised a dispute through GUJ and the confederation committee of GUJ and the union vide letter dated 14-10-1987 and the President of the Union also raised a dispute vide letter dated 9-10-1987 addressed to the Labour Commissioner on the matter of retrenchment. That the Labour Commissioner called a meeting on 16-10-87 which was attended by the representatives of GUJ, the confederation committee and 6 workmen on one side and the representatives of the employer on the other side. That on the said date, the GUJ and the six workmen denied any representation by the Union and hence the dispute raised by the union was treated as closed. That the said seven workmen, the GUJ and the Confederation Committee had represented the issue of retrenchment to the Labour Commissioner vide letter dated 4-12-87 and the Union was not a party to the said representation but the workman Mr. Shirsaikar was a signatory to the same. That after several meetings before the Deputy Labour Commissioner, the parties agreed on the payment of additional amount as ex-gratia but the settlement could not be signed as the workman Mr. P. H. Shirsaikar failed to sign for unknown reasons at the last moments. That thereafter, the matter was taken up by the Labour Commissioner and finally a settlement dated 24-3-1988 under Sec. 12(3) of the I. D. Act, 1947 was signed whereby retrenchment was accepted as proper and justified and the payment in full and final settlement was accepted. That as it was a 12(3) settlement, when the workman Mr. M. G. Parab approached the employer, he was also paid the benefits in terms of the settlement. The employer contended that the services of the workmen were retrenched after fully complying with the provisions under the act and the workman Mr. Parab would not withdraw his authority and he raised a fresh dispute as he was represented by GUJ and the Confederation Committee. The employer contended that the settlement under Sec. 12(3) of the I. D. Act, 1947 being a settlement in the course of the Conciliation Proceedings has a binding effect under section 18(3) of the Act, and the reference made by the Government is bad in law. The employer denied that the retrenchment of the workmen was to victimise or harass them for their being loyal to the Union. The employer also denied that new hands were recruited without giving the workmen opportunity and stated that it did not make any recruitment in the category of workmen retrenched. The employer contended that the workman Shri P. H. Shirsaikar withdrew his authority in favour of the Union only on 29-2-88 after the settlement was drawn on 19-2-88 which showed that the said Union had no following from the time dispute of retrenchment started in conciliation. The employer stated that no new recruitment was made in the category of workmen retrenched and none of the three persons referred by the Union were taken as Hand Compositors or Asst. Pressman, but were taken as trainees in camera section, proof-reading and pasting. The employer stated that the claim of the Union is not maintainable and the reference is liable to be rejected. The Union thereafter, filed rejoinder which is at Exb. 4 controverting the pleadings made by the employer in the written statement.

4. On the pleadings of the parties, issues were framed. However, subsequently, on the application filed by the employer for re-casting the issues, issues were re-framed as follows by order dated 23-11-1990:

1. Whether the memorandum of settlement u/s 12(3) of the I. D. Act, 1947 arrived at between the management of the Gomantak Pvt. Ltd., Panaji, and the Confederation Committee of Goa Union of Journalists and Newspaper and Press Employees' Union dated 29-3-88 is binding upon the two workmen Shri Francisco G. Martins, and Shri Pramod H. Shirsaikar, in as much as they were not the signatories to the settlement?

2. If Yes, whether the two workmen – Shri F. G. Martins and Shri P. H. Shirsaikar, are entitled to be reinstated in service of the opponent?

3. If not, whether the applicants-two workmen are entitled to any other relief?

4. What orders?

5. My findings on the issues are as follows:

Issue No. 1 : In the negative.
Issue No. 2 : In the negative.
Issue No. 3 : In the negative.
Issue No. 4 : As per order below.

REASONS

6. Issue No. 1: Both the parties argued orally and they also submitted their notes of arguments. Shri Rebello, representing the Union has contended that the settlement dated 24-3-88 (Exb. 38) is not binding on the workmen because they are not signatories to the said settlement nor the union is associated with the said settlement. He has contended that the GUJ has nothing to do with the workmen of Gomantak Pvt. Ltd., as the said workmen are represented by the Union and not by GUJ as is evident from the deposition of the President of GUJ and its Constitution. He has contended that the Conciliation Officer ought to have filed a failure report when the workman Shri Shirsaikar refused to sign the settlement. He has further submitted that the office bearers who signed the settlement had no authority to do so and hence the settlement is invalid and not binding. In support of his this contention he has relied

upon the decision of the Supreme Court in the case of Brook Bond India Ltd. v/s Workmen reported in 1981 II LLJ 184. Shri D. P. Sinha, representing the employer has submitted on the other hand that from the wordings of the reference it is clear that the Government has also accepted that there was a settlement and it was also aware of the force of Sec.12(3) of the settlement as otherwise the Government would have made the reference about the termination of service of the workmen. He has contended that once there was a settlement as regards retrenchment no dispute can be referred by the Government for adjudication touching the retrenchment. In support of his this contention he has relied upon the decision of the Allahabad High Court in the case of BIC v/s Labour Court reported in 1984(48) FLR 234. He has contended that the settlement dated 24-3-88, being comprehensive and under Sec. 12(3) of the I. D. Act, it binds all the retrenched employees whether they are represented in the settlement or they had withdrawn from the settlement or they are not parties to the settlement and the workmen if at all are entitled to reliefs as stipulated under clause 2 of the settlement. He has further contended that since on 16-10-87 the date on which the conciliation proceedings were fixed, the aggrieved workmen stated that they wanted to be represented by the Confederation Committee and not by Mr. Rebello, the President of the Union, the said settlement cannot be challenged on the ground that it is signed by unauthorised person. In support of his above contentions Mr. Sinha relied upon the decisions of the Supreme Court (1) in the case of Ramnagar Cane and Sugar Co. Ltd., v/s Jatin Chakravarti, reported in (1950-77)4 SCLJ 2369 (2) in the case of Barauni Refinary Pragatisheel Shramika Parishad reported in 1990 (61) FLR 203; that of the Allahabad High Court in the case of Indian Milk Products Ltd., v/s Labour Court, Meerut, reported in 1992 II LLJ 234 and that of the Bombay High Court in the case of Association of Chemical Workers v/s Wahid Ali, reported in 1980 I LLJ 276.

7. It has been contended by the employer that the reference of the dispute which has been made by the Government is only as regards binding effect of the settlement dated 24-3-1988 on the workmen, and no whether the termination of services of the workmen by retrenchment is legal and justified. I do not agree with this contention of the employer. The reference consists of two parts. The first part refers to the demand of the workmen for their reinstatement in service on the ground that termination of their service is illegal and unjustified and the other part refers to the settlement dated 24-3-1988. If this settlement binds the workmen then the question of deciding the issue whether the workmen are entitled to reinstatement will not arise. On the other hand if the settlement is not binding on the workmen, it will have to be decided whether the workmen are entitled to reinstatement or not and to decide this, this tribunal will have to go into the fact whether the retrenchment of the workmen is legal and justified as termination of service of the workmen is on account of retrenchment. Therefore there is no force in the contention of the employer that the dispute which is referred pertains to only the binding effect of the settlement dated 24-3-1988. This being the case it is now to be seen whether the settlement dated 24-3-1988 entered with the employer is binding on the workmen.

8. It is an admitted fact that on 7-10-87 the services of 9 employees including that of the workmen Shri Francisco Martins and Shri Pramod Shirsaikar were terminated by the employer by way of retrenchment. The records show that out of these 9 employees, 6 employees raised the dispute about their retrenchment before the employer by letter dated 14-10-87 and the copy of the same was endorsed to the Labour Commissioner. From the said letter it can be seen that though the name of the workman Shri Pramod Shirsaikar was included, he never signed the said letter. There is an endorsement on the said letter that the signature of the remaining workmen would be endorsed subsequently. The records however do not show that such an endorsement was obtained subsequently. The records also show that a rejoinder was filed to the reply of the employer dated 26-10-87. In the rejoinder also though the name of the workman Shri Pramod Shirsaikar was mentioned, he never signed the said rejoinder. Therefore it is clear that the workmen Shri Martins and Shri Shirsaikar had never raised any dispute as regards termination of their service by way of retrenchment through the Confederation Committee of Goa Union of Journalists (for short, 'GUJ') or the Union, namely the News paper and Press Employees Union. These workmen were never a party to the dispute raised before the Labour Commissioner and with reference to which conciliation proceedings were held and subsequently settlement dated 24-3-88 was signed. The contention of the employer is that since the settlement dated 24-3-88 is a 12(3) settlement being signed in the conciliation proceedings, it is binding on all the workmen who were retrenched and no dispute can be raised as regards termination of their service, and consequently no reference can be made by the Government. According to the employer the said settlement binds the retrenched workmen who were not parties to the dispute as also those who were not parties to the dispute as also those who withdrew from the conciliation proceedings. In support of this contention, Shri Sinha representing the employer has relied upon the decision of the Supreme Court in the case of (1) Ramnagar Cane Sugar Co. Ltd., (2) Indian Oil Corporation Ltd. (Supra), that of the Allahabad High Court in the case of Indian Milk Products Ltd. (Supra) and that of the Bombay High Court in the case of Association of Chemical Workers (Supra). I have gone through the above decisions as well as the decision of the Supreme Court in the case of Brooke Bond India Ltd. (Supra) relied upon by the Union. In the case of Brooke Bond India Ltd., the Supreme Court has held that if the authority of the office bearers of the Union to sign the settlement is challenged the authority or authorisation has to be established as a fact and it is not enough if

the employer merely points out and relies upon the fact that the settlement was signed by one or more of the office bearers. However, in my view this authority of the Supreme Court cannot be applied to the present case, as it was a case the agreement was arrived at between the office bearers of a union and the management after the reference of the dispute was made by the Government and the dispute was pending before the tribunal. It was not a case where agreement or settlement was arrived at in the course of the conciliation proceedings. The facts involved in the said case are totally different from the one involved in the present case. I have gone through the authorities relied upon by the employer which are referred to herein above. It is no doubt true that in the said authorities the proposition which is laid down is that if a settlement is arrived at between the Union and the management in the course of the conciliation proceedings the said settlement is binding on all the workmen. It has been further held that such a settlement is binding also on the workers who are the members of the minority union. However, this is the case when the dispute is espoused by the union on behalf of the workers of the establishment. In the present case the records show that the dispute as regards termination of service which was as a result of retrenchment was not espoused by the union but it was raised by the concerned workmen themselves. This is evident from the letter dated 14-10-87 contained in the conciliation file Exb. 40. This letter does not bear the signature of the workman Shri Pramod Shirsaikar, though his name figures in the said letter. The name of the other workman Shri Francisco Martins does not figure in the said letter at all. Therefore it cannot be said that workman Shri Francisco Martins was a party to the dispute raised by the other workers. The said letter mentions that the workers who have signed the said letter are represented by the Confederation Committee of GUJ and NEPU. Therefore for all purposes the dispute as regards termination of service was raised by the workers who were the signatories to the said letter 14-10-87 individually and the said dispute was not espoused by the Union or by GUJ. There is no evidence that the dispute as regards retrenchment was raised by GUJ or by the Union. The question would have been different if the dispute as regards retrenchment was raised by the Union or by GUJ and in the conciliation proceedings a settlement was arrived at. In such a case such a settlement would be binding on all the retrenched workers. However, this is not the case in the present case. Therefore, in the light of what is discussed above I am of the view that the settlement dated 29-3-1988 arrived at between the management of M/s Gomantak Pvt. Ltd., and the Confederation Committee of Goa Union of Journalists and News Paper and Press Employees Union is not binding upon the workmen Shri Promod Shirsaikar and Shri Francisco Martins. Hence, I answer the issue No. in the negative.

9. *Issue Nos. 2 & 3.*: Shri N. J. Rebello, representing the Union submitted that the services of the workmen were terminated by the employer by way of retrenchment on the ground that they had become surplus and redundant. He submitted that the employer did not follow the provisions of Sec. 25(G) of the I. D. Act, 1947 as though the workmen in the present reference were senior in service were retrenched but the other workers namely Shri S. S. Chavan and Shri Parshiram who were junior in service were retained. He submitted that the reason for retrenchment given by the employer being that the workmen had become surplus on account of introduction of photo type printing machine and other modern machinery is false and unbelievable because most of the modern machineries were introduced by the employer several years before and the work had also increased double fold. He submitted that the employer did not pass speaking order giving reasons for retrenching the workmen as is required under Sec. 25(G) of the I. D. Act, so that the tribunal can determine whether the retrenchment is justified by sound, sufficient and valid reasons. He submitted that the workman Shri Francisco Martins was working as a Asst. Pressman and hence even if mechanisation of the composing was done his service could never have become redundent. He submitted that there is evidence on record to show that the employer employed 54 new workmen which shows that the action of the employer in retrenching the workmen is with ulterior motive, malafide and without justification. He submitted that the employer did not comply with the provisions of Sec. 25F of the I. D. Act, while retrenching the workmen and therefore the retrenchment is illegal. In support of his this contention he relied upon the decision of the Supreme Court in the case of (1) State Bank of India v/s Sunder Money reported in AIR 1976 SC 1111 (2) Mahanlal v/s Bharat Electronics Ltd., reported in 1981 SCC(L&S) 178; (3) Robert D'Souza v/s Executive Engineer Southern Railways reported in 1982 SCC (L&S) 124 (4) K. P. Dam v/s Harzarala Loha Karkhana Mazdoor Congress, reported in 1956 LLJ 675 and (5) Kamata SRTC v/s M. Boraiala, reported in 1984 SCC 244. Shri Rebello also submitted that the rule of "first come last go" is a must in each and every case of retrenchment and the employer has to follow the said rule and the exception to this rule is only in case of proved misconduct and loss of confidence. In support of his this contention he relied upon the decision of the Supreme Court in the case of Suraj Prakash Bhandari v/s Union of India, reported in 1986 SCC 858. He submitted that the workmen are liable to be reinstated in service with full back wages as their retrenchment is illegal and unjustified.

Shri D. P. Sinha, representing the employer submitted on the other hand that the retrenchment was effected by the employer after following the prescribed procedure. He referred to the deposition of the workman Shri Shirsaikar and submitted that he has admitted that a seniority list was prepared and his name was figuring at Sr. No. 17. He thereafter referred to the deposition of the workman Shri Francisco Martin and submitted that he has admitted that his signature was taken on the paper and he was given cheque towards the payment

of his legal dues. He submitted that the employer had displayed a notice dated 23-1-85 (Exb. 24-E) calling the employees for training in photo-composing but the workmen did not volunteer for such a training. He submitted that there is no evidence on record to show that the employer violated the provisions of Sec. 25(H) of the Industrial Disputes Act. Shri Sinha therefore submitted that the retrenchment of the workmen is legal and justified and the workmen are not entitled to any relief.

10. The present dispute pertains to the retrenchment of the services of the workmen Shri Francis Martins and Shri Pramod Shirsaikar. It is the case of the employer that in early 1985 it introduced photo composing process on trial basis and on finding that the said process was successful a notice under sec. 9A of the Industrial Disputes Act, 1947 in form "E" was displayed on 6-9-85 with copies of the same to the Union, GUJ, Labour Commissioner, Asst. Labour Commissioner. It is the case of the employer that on introduction of the photo composing machine from October 1985, 30 workers from hand composing and other related sections were found to be surplus. It is further the case of the employer that out of the 30 workers, one resigned, seven retired in due course, thirteen were absorbed in various suitable posts and remaining 9 could not be accomodated anywhere due to unsuitability or failure to offer for training and therefore they were retrenched w.e.f, 7-10-87. Out of 9 workers who were retrenched 6 compositors, 1 caster, 1 Asst. Pressman and 1 ballar. These 9 workers included the workmen in the present reference namely Shri Francisco Martins who was working as Asst. Pressman and Shri Pramod Shirsaikar who was working as compositor. The Union examined its president Shri N. J. Rebello, Shri Prakash Kurdikar, the President of GUJ, and the two workmen Shri Francisco Martins and Shri Pramod Shirsaikar. The notice dated 23-1-85 (Exb. 24 E) clearly shows that the workers who were working in the composing section were made aware by the employer that the work of hand composing would be discontinued on introducing one more photo composing machine by the end of February 1985. By the said notice the workers were also informed that those who desired to work as photo compose operator would be given training and they would be absorbed as photo compose operators and for that they had to give proper application. The workers were also informed that the employer required 3 wallers in the photo composing section and those who desired to take training should make the necessary application. There is no evidence on record from the Union that the workmen Shri Francisco Martins and Shri Pramod Shirsaikar offered themselves for the above said training. The Supreme Court in the case of Parry & Co. Ltd., V/s Second Industrial Tribunal, reported in 30 FLR 165 has held that it is the right of the employer to reorganise his business and so long as it is done bonafide, it is not competent for a Tribunal to question its propriety. The Supreme Court has further held that it is for the employer to decide the strength of his labour force and if the number exceeds the reasonable and legitimate needs of undertaking it is open to the employer to retrench the surplus labour. In the present case the employer bonafidely wanted to introduce photo composing process as it wanted to do away with hand composing. With the introduction of this photo composing process, the workforce was bound to be rendered surplus.This fact has been admitted by the Union in their letter dated 7th February 1985 Exb. 26 colly. This letter is written by the Union to the Asst. Labour Commissioner. In this letter it has been admitted by the Union that as a result of the automisation in the composing department about 40 compositors and other staff will be affected. The workman Shri Shirsaikar has admitted that prior to retrenchment a seniority list was prepared. There is no evidence on record to show that the employer violated the provisions of sec. 25(G) of the I. D. Act, while retrenching the workers. The deposition of the workman Shri Pramod Shirsaikar itself shows that the employer was justified in retrenching the services of the workmen. He has stated in his deposition that prior to their retrenchment they were kept idle for 2 years while other workers were trained during this period. This shows that they were kept idle because there was no work for them which they could do after the introduction of the photo composing machines. As I have mentioned earlier there is no evidence on record to show that the workmen Shri Francisco Martins and Shri Shirsaikar had offered themselves for training or that they had offered to do any other work so that they could be absorbed. In the circumstances the employer was justified in retrenching the services of the workmen.

11. The Union has contended that the employer did not comply with the provisions of sec. 25F of the Industrial Disputes Act, 1947. This provision requires the employer to pay compensation and notice pay in lieu of notice to the workman in case of retrenchment. The employer had contended in the written statement that at the time when the services of the workmen were terminated, they were given cheques towards the payment of all their legal dues. The employer had denied that provisions of Sec. 25F were violated. The burden was therefore on the union to prove that no retrenchment compensation was paid by the employer. However, the union did not lead any evidence on this aspect. The workmen who examined themselves also did not say a word about non payment of retrenchment compensation to them. The termination notices dated 7-1-1987 issued to the workmen Shri Francisco Martins and Shri Pramod Shirsaikar are on record as Exb. 24 colly. These notices show that alongwith the said notices cheque was enclosed towards the payment of the notice pay and retrenchment compensation. Therefore there is evidence to show that the employer had complied with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. There is no counter evidence from the Union to this. I, therefore hold that the Union has failed to prove that the employer failed to comply with the provisions of Sec. 25F of the I. D. Act, 1947. The other contention which has been raised by the union is that after retrenching the services of the workmen the

employer has employed new workers and thereby has violated the provisions of sec. 25(H) of the Industrial Disputes Act, 1947. The union has produced the list of the workers at Exb. 19 who were employed by the employer after the workmen Shri Martins and Shri Shirsaikar were retrenched. The Union has also produced the advertisement at Exb. 20 published in the newspaper "Gomantak" offering employment. This list of workers Exb. 19 as well as the advertisement Exb. 20 is of no help to the Union because the list does not show that the workers were employed in the category in which the workmen Shri Francisco Martins and Shri Shirsaikar were working nor the advertisement Exb. 20 shows that the offer of employment was given in the category in which the said workmen were working. There is no evidence from the Union to show that in pursuance to the notice of the employer dated 23rd January, 1985 the said workmen had offered themselves for training on introduction of the photo composing machine or that they had offered themselves for doing any other work so that they could be accommodated and this offer was rejected by the employer. There is also no evidence to show that persuant to the advertisement which appeared in the newspaper, the workmen offered themselves for employment and they were refused employment. Therefore in the absence of any evidence from the Union it cannot be held that the employer violated the provisions of sec. 25H of the Industrial Disputes Act, 1947.

12. In the light of what is discussed above, I hold that the workmen Shri Francisco Martins and Shri Pramod Shirsaikar are not entitled to reinstatement in service. I, further hold that they are also not entitled to any relief. I, therefore answer the issue Nos. 2 and 3 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the settlement dated 24-3-1988 arrived at between the management of M/s Gomantak Pvt. Ltd., and the Confederation Committee of Goa Union of Journalists and Newspaper and Press Employees Union is not binding on the workmen Shri Francisco G. Martins and Shri Pramod H. Shirsaikar. However, it is hereby held that the workmen Shri Francisco G. Martins and Shri Pramod H. Shirsaikar are not justified in demanding reinstatement in service. It is further held that the workmen Shri Francisco Martins and Shri Pramod Shirsaikar are not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/98/3954

The following Award dated 9-8-1999 in Reference No. IT/5/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 16th August, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/5/95

Shri Anil Gowandi,
Rep. by the General Secretary,
Kadamba Drivers & Allied
Workers Union,
Kamakshi Krupa, Ground Floor,
Ponda-Goa. — Workman/Party I

v/s

M/s Kadamba Transport
Corporation Ltd.,
Panaji-Goa. — Employer/Party II

Workman/Party I represented by Adv. Shri P. B. Devari.
Employer/Party II represented by Adv. Shri C. J. Mane.

Dated: 9th August, 1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its order dated 16-12-94 bearing No. 28/52/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Kadamba Transport Corporation Ltd., Panaji, in terminating the services of Shri Anil Gowandi, Conductor, with effect from 13-10-93 is legal and justified ?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/5/95 and registered A/D notice was issued

to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I was represented by Adv. Shri Devari and the Employer-Party II was represented by Adv. Shri Mane. The Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleased by the Workman are that he was employed with the Employer-Party II (for short, "Employer") as a Conductor since January 1981. That he was suspended on 15-7-92 on the charge that an amount of Rs. 99.75 was found short in his cash bag when he was checked on 12-7-92. Thereafter, he was issued chargesheet and subsequently, an enquiry was held against him. That the enquiry office acted in a bias manner and he gave the findings in favour of the employer. That the employer thereafter, dismissed him from service though no such action was taken against the workman who was charged of serious offences. The workman contended that his services were terminated by way of victimisation, he being the office bearer of the Union. The workman contended that termination of his service is illegal and unjustified and discriminatory and threfore he is entitled to reinstatement in service with full back wages.

3. The employer filed the written statement which is at Exb.5. The employer stated that the workman joined services from 19-1-82 and not from January 1981. The employer denied that the enquiry officer acted bias or that he gave findings against the workman to favour the employer. The employer stated that since 1985, twenty two cases were booked against the workman and every time, lenient view was taken considering the fact that he would improve in his behaviour. The employer stated that the workman was given full opportunity to participate in the enquiry and the enquiry officer gave proper findings. The employer denied that the punishment awarded to the workman is harsh or severe and stated that the said punishment was awarded after considering the past record of the workman. The workman thereafter, filed rejoinder.

4. On the pleadings of the parties, following issues were framed.

1. Whether the Party I proves that the domestic enquiry held against him is not fair and impartial ?
2. Whether the Party I proves that the termination of his services by the Party II is by way of victimisation and in violation of Sec. 33 of the Industrial Disputes Act, and hence illegal ?
3. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
4. Whether the Party I proves that the termination of his services by the Party II with effect from 13-10-93 is illegal and unjustified ?
5. Whether the Party I is entitled to any relief ?
6. What Award ?

5. Since the issue Nos. 1 and 3 were pertaining to the fairness of the enquiry and the perversity of the findings of the Inquiry Officer respectively, the said issues were treated as preliminary issues. By order dated 29-1-99 this Tribunal decided the said preliminary issues holding that the domestic enquiry held against the workman is fair and proper. This Tribunal also held that the charges levelled against the workman in the charge sheet dated 15-7-92 bearing No. 1528 and the charges at Sr. Nos. 1 and 2 in the chargesheet dated 17-7-92 bearing No. 1527 are proved. Thus by the said order dated 29-1-99 the issue Nos. 1 and 3 were disposed of in the manner mentioned, above.

6. My findings on the remaining issues are as follows:

Issues No. 2 : In the negative.

Issues No. 4 : In the negative.

Issues No. 5 : In the negative.

Issues No. 6 : As per order below.

REASONS

7. *Issue No. 2* : Burden was cast on the workman to prove this issue as it was the case of the workman that his services were terminated by the employer by way of victimisation and also that the termination was in violation of the provisions of Sec. 33 of the Industrial Disputes Act, 1947. The records show that several opportunities were given to the workman to lead evidence on the preliminary issues, but he did not do so. After the order on the preliminary issues was passed as stated earlier, the case was fixed for the evidence of the workman on the remaining issues. However, inspite of the opportunity given neither the workman nor his Advocate remained present and consequently the evidence of the workman was closed on 12-2-99. In the circumstances, there is no evidence from the workman to prove that the employer terminated his services by way of victimisation or that the employer violated the provisions of Sec. 33 of the Industrial Disputes Act, 1947 at the time of termination of his service. In the absence of any evidence from the workman this issue cannot be answered in his favour. I, therefore hold that the workman has filed to prove that the termination of his service by the employer is by way of victimisation or that it is in violation of the provisions of Sec. 33 of the Industrial Disputes Act, 1947. In the circumstances, I answer the issue No. 2 in the negative.

8. *Issue No. 4* : it is the workman who raised the dispute that termination of his service by the employer is illegal and unjustified. It has been mentioned by me earlier that inspite of the opportunities given, the workman remained absent and did not lead evidence on preliminary issues as also on other issues. The workman has not produced any evidence to prove that termination of his service is illegal and unjustified. While

deciding the preliminary issue No. 3, by order dated 29-1-99 I have held that the charges levelled against the workman in the chargesheet dated 15-7-92 bearing No. 1528 are proved and in respect of the chargesheet dated 15-7-92 bearing No. 1527 charges at Sr. Nos. 1 and 2 are proved. The charges of misconduct which are held to be proved against the workman are that of finding excess amount with him on once occasion and finding amount short on two occasions. Finding excess amount with the workman means that he has collected the bus fare from the passengers but tickets were not issued to them and finding shortage of amount with the workman means that the workman has collected the bus fare from the passengers and issued tickets to them but has utilised the amount for himself. In both these types of cases dishonesty is involved. The Madhya Pradesh High Court in the case of Devi Kanandan Tiwari v/s State Industrial Court, M. P. reported in 1990 II CLR 731 has held that the Conductor is expected to be vigilant enough and see that no passenger travels without ticket and if the conductor is unable to discharge this sacred trust reposed in him by the employer he does not deserve to be retained as a conductor. The High Court held that the punishment of dismissal awarded to the conductor was proper and justified. In the case of Pandurang Kashinath Wami v/s The Divisional Controller, M.S.C.R.T.C., Dhule, reported in 1995 I CLR 1052 the Bombay High Court held that the punishment of dismissal from service was justified as the Conductor was guilty of issuing used tickets; collecting fare from the passengers but not issuing tickets and also excess amount was found with him. From the above authorities it can be seen that they were the cases where the conductor had committed misconduct of the like committed by the workman in the present case and the High Courts held that the misconduct was grave and therefore the punishment of dismissal from service was proper and justified. The same principles are applicable to the present case. The employer has led evidence on the past conduct of the workman by examining its Personnel Officer Shri Anant Shirvoikar. His deposition has gone unchallenged as the workman as well his Advocate remained absent and consequently he was not cross examined. The said witness has produced the default notices dated 24-2-88, 8-8-88, 11-1-89, 29-3-89, 16-4-90, 3-1-92 and 12-4-92 The same are produced at Exb. E-4 colly. All these default notices are with reference to finding short amount or excess amount with the workman besides some other offences. All these default notices are in respect of the offences committed by the workman other than those mentioned in the charge sheets involved in the present case. This shows that in the past also the workman was acting detrimental to the interest of the employer, and causing loss of revenue to the employer. The witness Shri Shirvoikar has also produced the memos dated 25-4-89 and 18-6-98 issued to the workman. They are produced at Exb. E-5 colly. The said memos show that the employer had given opportunity to the workman to show cause why action should not be taken against him in respect of the default notices issued to him. The said witness has also produced the order dated 3-11-87 at Exb. E-6 which shows that the workman was fined Rs. 25/- for the offence committed by him and he was also warned that repitation of the offences in future would be viewed seriously. All the above documentary evidence produced by the employer shows that the past conduct of the workman was not good and had the tendency to act dishonestly. The witness Shri Shrivoikar has stated that before passing the dismissal order the nature of the misconduct involved and the past conduct of the workman was considered. In the circumstances I hold that the workman has failed to prove that termination of his services by the employer is illegal and unjustified and hence I answer the issue No. 4 in the negative. In my view the punishment of dismissal from service awarded to the workman by the employer is legal and justified.

9. *Issue No. 5* : Since it has been held by me that the termination of service of the workman is legal and justified, no relief can be granted to the workman. In the circumstances, I hold that the workman is not entitled to any relief and hence I answer the issue No. 5 in the negative.

In the circumstances I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Kadamba Transport Corporation Ltd., Panaji - Goa, in terminating the services of the workman Shri Anil Gowandi, Conductor, with effect from 13-10-93 is legal and justified. It is hereby further held that the workman Shri Anil Gowandi is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/98/3955

The following Award dated 2-8-1999 in Reference No. IT/4/86 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 16th August, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Befor Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/4/86

Workmen
Rep. by Goa Trade & Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa. — Workmen/Party I

v/s

M/s M. S. B. Caculo
St. Inez,
Panaji-Goa. — Employer/Party II

Workmen/Party I represented by Shri Subhash Naik

Employer/Party II represented by Adv. P. J. Kamat

Dated: 2-8-99

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lieutenant Governor of Goa, Daman and Diu by order No. 28/49/85-ILD dated January 9, 1986 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s S. B. Caculo, St. Inez, Panaji Goa, in refusing to concede the demands as listed in the Schedule annexed hereto, of the workmen represented through Goa Trade & Commercial Workers Union are legal and justified.

SCHEDULE OF DEMANDS

Demand No. I : *Grades & Payscales*: It is demanded that the following grades & payscales be made applicable to the workmen.

Grade	Designation	Payscales
I	Peon, Helper, Sweeper Watchman	300-20-400-25-525-30-~~5~~-~~5~~-~~5~~-675-40-875-~~5~~
II	Jr. Clerk, Jr.Operator Jr. Mechanic	400-25-525-30-675-35-~~5~~-~~5~~-~~5~~-850-45-1075-~~5~~
III	Typist, Clerk, A/c Clerk Salesman, A/s Asst-cum-Sales, Admn. Asst-Recep-tionist-cum-Typist, Plumber, Operator, Welder, Welder-cum-Fitter, Asst. Mechanic Driver.	500-30-650-35-825-40-~~5~~-~~5~~-~~5~~-1025-50-1275/5
VI	Sr. Salesman, Supervisor, Sr. Operator, Ref. Mech. Tractor Mechanic, Senior Mechanic, Mines-mate, Sr. Welder.	600-35-775-40-975-45-~~5~~-~~5~~-~~5~~-1200-55-1475/5
VII	Sales Executive, Branch Sales Manager, Accountant Head Mechanic, Senior Refrigeration Mech.	700-40-900-1150-60-~~5~~-~~5~~-1450-70-1800/5

Demand No. II : *Flat Rise:* It is demanded that each work-person in the above six concerns should be given a FLAT RISE of Rs. 200/- per month over and above the existing consolidated monthly salary, which total should be fitted in the respective payscales and grades in Demand No. I.

Demand No. III : *Fitment:* after adding the flat rise of Rs. 200/- to the consolidated salary as existing on 1st June, 1985, the total of flat rise and the existing consolidated salary should be fitted in the pay scales and grades as above. Those below the pay scales shall be fitted in the minimum first stage in the scale-pay and those in between the stages in the pay scale shall be fitted at the next highter stage in the pay scale. And thereafter.

Demand No. IV : *Seniority Increments:* It is demanded that after fitment, each workmen shall be eligible to seniority increments on the following basis, depending on the number of years of service.

Those who has completed 1 year of service, 2 increments.
Those who have completed 4 years of service, 2 increments.
Those who have completed 8 years of service, 3 increments.
Those with 12 years of service 4 increments.
Those with 16 years of service 5 increments.
Those with 20 years of service 6 increments.

Demand No. V : *Fixed Dearness Allowance:* It is demanded that each of the work

person in M/s M.S.B. Caculo, Panaji, shall be paid a F.D.A. @ 20% on the total basis salary w.e.f. 1st July, 1985

Demand No. VII : *House Rent Allowance:* It is demanded that each workperson in M/s M.S.B. Caculo, Panaji, Goa shall be paid HRA at the rate of 10% on the basic monthly salary w.e.f. 1st July, 1985.

Demand No. IX : *Washing Allowance:* It is demanded that each workperson in M/s M.S.B. Caculo, Panaji shall be paid a washing allowance at the rate of Rs. 25/- per month w.e.f. 1-7-1985.

Demand No. X : *Leave Travel Allowance:* It is demanded that each work person in M/s M.S.B. Caculo, Panaji shall be paid LTA at the rate of Rs. 300 per year.

Demand No. XI : *Bhatta:* It is demanded that those workpersons who are required to go out on work such as Drivers, and other mobile staff shall be paid Bhatta on the following rates:

a) Inside Goa ..... Rs. 10/- per day
b) Outside Goa .... Rs. 30/- per day with the benefit of double O. T. for work rendered beyond normal 8 hours; a lodging expenditure if sent outside Goa or in such special circumstances or cases.

Demand No. XII : *Night Shift Allowance:* It is demanded that those workperson who are required to work in shifts shall be paid shift allowasnce for the following basis.

IInd shift ..... Rs. 3/-
IIIrd shift ..... Rs. 5/- plus milk or coffee.

Demand No. XIII : *Festival Advance:* It is demanded that each workshall be paid one full salary as festival advance, to be deducted in 10 equal monthly instalments.

Demand No. XIV : *Loan Facilities:* It is demanded that each workperson should be eligible during the subsistance of this settlement for a one time loan of Rs. 4000/- without being charged any interest and to be deducted in 40 easy instalments.

Demand No. XV : *Change in Timing:* It is demanded that the workers in M/s M.S.B. Caculo, Panaji, Goa, excepting those with shift working, should be enjoined upon to work under the following timings; 09.00 hrs. to 17.00 hrs. with an hour lunch break, and introduce a five day week w.e.f. 1-8-85.

Demand No. XVIII : *Leave Facilities:* It is demanded that each work person in the management of M/s M. S. B. Panaji, Goa shall be eligible to the following leave facilities.

Privilege leave ...	30 days per annum with the benefit to accumulate upto 90 days.
Casual leave ...	7 days with no accumulation.
Sick leave ...	10 days with the benefit to accumulate upto 30 days.
Holidays ...	14 days per annum which should be paid for.

Demand No. XIX : *Uniforms, Safety shoes, Rain coats, Rain shoes:* It is demanded that each workperson should be provided with three pairs of uniforms (once a year) Rain coats, rain shoes (once in two years) and one pair Safety shoes once a year w.e.f. 1-8-85.

Demand No. XXII : *Allotment of Work as per Designation:* It is demanded that work should be allotted to the work person as per their designations & grade and harassment that is presently being meted out to the workperson should end.

Demand No. XXIII : *Discount & Credit on Goods brought from Caculos:* It is demanded that the existing practice of giving discount & credit on goods bought by the workman from the house of Caculo's should continue.

Demand No. XXIV: *Rest Rooms & Lockers:* it is demanded that each workperson should be allotted a locker to store way safely his/her personal belongings & there should be properly maintained rest rooms and lunch rooms in all the establishments.

If not, to what reliefs the workmen are entitled to ?"

2. On receipt of the reference, a case was registered under No. IT/4/86 and registered A/D notice was issued to the parties. In persuance to the said notice, the parties put in their appearance. The workmen /Party I (for short 'Union') filed its statement of claim at Exb.2. The facts of the case in brief as pleaded by the Union are that the employer/Party II (for short 'Employer') when started its business at Panaji in the year 1910 was a sole trading concern dealing initially in the purchase and sale of imported trucks, tractors and cars of reputed brands namely Ford, Zodiac, Zaphier, Anglia, Taunus and Thames/Trader besides motorcycles, cycles, stone crushers, concrete mixer etc. That thereafter, the employer expanded its business and traded in purchase and sale of products like castor oil, motor spares, refregerators, steel furnitures, TVS, pressure cooker, batteries, lamps/tube lights, radios, tyres/tubes and other electrical appliances of reputed brands, besides undertaking civil construction works. That, somewhere in the year 1965, the employer further expanded its business by opening 5 sister concerns namely, M/s M. S. B. Caculo & Associates Panaji, M/s Metal Suppliers and Grills Stores, Panaji, M/s M. S. B. Caculo Pvt. Ltd., (Escorts Division); M/s M. S. B. Caculo Nets Pvt. Ltd., and M/s Manoj Electronics. That on 2-6-85, a General Body Meeting of the workers of all the six concerns was held at panaji and it was unanimously decided by the workers to unionise themselves in order to safe guard their legal rights, seek wage revision etc. and they decided to become the members of the present Union, namely, the Goa Trade & Commercial Workers Union, and this fact was informed to Mr. Sridora S. B. Caculo, the Chairman of M/s Caculo Group of Companies and to Shri Mohan S. B. Caculo and Shri Pandurang S. B. Caculo, the Managing Partners. That they were also informed that a Committee was elected among the workers and they were also furnished with names of the office bearers of the Company. That thereafter, the President of the Union by letter dated 30-6-85 served a Charter of Demand on behalf of the workmen on the employer. That on receipt of the letter from the President of the Union, the employer started harassing and victimising the workmen and also started pressuring them to resign from the union and further the employer did not even reply to the said letter of the union. That since the demands of the Union stood unresolved, the workers decided to go on strike and accordingly, the strike notice was served on the employer intimating that the workmen would strike work on 8-7-83. That the Asst. Labour Commissioner vide letter dated 16-7-85 called the Union as well as the employer for discussion on 19-7-85 but the employer refused to sit for discussion, and the meeting was adjourned to 12-8-95 which was attended by the employer. That thereafter, the Asst. Labour Commissioner, Panaji, again invited the Union as well as the employer to attend the discussions on 5-9-1985 on the issue of charter of demands and accordingly, the Union attended the discussion fixed on 5-9-85 but none attended on behalf of the employer. The Asst. Labour Commissioner produced a letter received from the employer wherein it was stated that the question of discussing over the charter of demands did not arise and according to the employer, the wage scales were fair, proper and reasonable. That during the conciliation proceedings held on 12-8-85, the employer had expressed its willingness to offer a reasonable amount towards interim Relief pending final settlement on the said charter of demands, but vide letter dated 5-9-85, the employer informed that the wages paid to the workmen were fair and proper and therefore, the question of discussing over the charter of demands did not arise and as such, the employer denied to pay interim relief. The union contended that due to the adamant attitude of the employer, the conciliation ended in failure. That as a matter of harassment and victimisation, the employer denied Annual Increments to the workmen for the year 1985. and hence the workers were left with no alternative but to go on strike w.e.f. 2-7-86. The Union contended that the employer is financially very sound and has the capacity to pay higher salaries to the workmen and grant the demand made by the union/workmen. The Union contended that the employer has neither revised the salaries of the workmen nor has paid the variable dearness allowance inspite of the fact that the prices have been rising and the cost of living in Goa is very high. The Union therefore, claimed that the demands raised by them are fair, just and reasonable.

3. The employer filed written statement at Exb.3. The Party II stated that the business of the nature stated by the Union was stated by late Shri Mahadev Caculo but in the year 1951, the said business was purchased by Mr. Shridhar Caculo and in the year 1961, import of the said goods was stopped. The employer stated that after liberation of Goa, its business was unsettled and as such agencies for new products were obtained from time to time and ultimately, opted for TV's in the year 1982. The employer denied that there was expansion of business. The employer stated that due to low margin and competetiveness in the sale of Indian products, the agencies for batteries, bulbs, tube lights, radios, tyres and other electrical appliances were discontinued and also the employer ceased to deal with domestic electrical appliances of general Electric Company of India. The employer stated that as far as agency for refrigerators was concerned, the principals appointed another dealer as the employer was unable to provide proper service to the customers due to the non co-operative attitude of the workers. The employer stated that it is a partnership firm having legal status of its own and its

registered under various Acts independently and has no relationship whatsoever with any other private firm or company and is not associated with any other firm or company with which the Directors or the partners may be connected in their individual capacity. The employer denied that its workers are represented by Goa Trade and Commercial Workers Union. The employer admitted that it received a charter of demands signed by one Shri Christopher Fonseca, who claimed to be the President of the Union. The employer denied that it had at any time agreed to grant interim relief to the workmen. The employer stated that the wages of the workmen were revised periodically and all the factors including the necessity to travel was considered and whenever the wages were increased, the comparable wage structure in Goa was considered. The employer denied that it has the capacity to pay higher salaries to the workmen and grant the demands of the union. The employer stated that the workmen are not entitled to any relief and the demands raised by the union on behalf of the workmen are not just and legal. Thereafter, the Union filed Rejoinder at Exb.4.

4. On the pleadings of the parties, following issues were framed at Exb.5.

1. Do the Workmen/Party No. I prove that their wages have been almost stagnant during their service time ?
2. Do they further prove that their demands are reasonable and fair compared to what similar establishments pay to their workers in this Territory and elsewhere ?
3. Do the Workmen/Party I prove that the financial position of the Party II is sound and that they have been making huge profits, but have not kept proper accounts deliberately to show lesser profits as alleged ?
4. If so, whether the following demands as listed in the schedule are just and legal taking into consideration overall activities of an financial position and assets of Party II as claimed by the Union ?

SCHEDULE OF DEMAND

Demand No. I : *Grades & Pay scales:* it is demanded that the following grades & pay scales be made applicable to the workmen.

Grade	Designation	Pay scales
I	Peon, Helper, Sweeper Watchman	300-20-400-25-525-30-675-40-875
II	Jr. Clerk, Jr. Operator, Jr. Mechanic	400-25-525-30-675-35-850-45-1075
III	Typist, Clerk, A/c Asstt-cum-Sales, Admn. Asstt., Receptionist-cum-Typist, Plumber, Operator, Welder, Welder-cum-Fitter, Asst. Mechanic Driver.	500-30-650-35-825-40-1025-50-1275
VI	Sr. Salesman, Supervisor, Sr. Operator, Ref. Mech. Tractor Mechanic, Senior Mechanic, Mines-mates, Sr. Welder.	600-35-775-40-975-45-1200-55-1475
VII	Sales Executive, Branch Sales Manager, Accountant, Head Mechanic, Senior Ref. Mechanic.	700-40-900-50-1150-60-1450-70-1800

Demand No. II : *Flat Rise:* It is demanded that each work-person in the above six concerns should be given a FLAT RISE of Rs. 200/- per month over and above the existing consolidated monthly salary; which total should be fitted in the respective pay scales and grades in Demand No. I.

Demand No. III : *Fitment:* after adding the flat rise of Rs. 200/- to the consolidated salary as existing on 1st June, 1985, the total of flat rise and the existing consolidated salary should be fitted in the pay scales and grades as above. Those below the pay scale shall be fitted in the minimum first stage in the scale-pay and those in between the stages in the pay scale shall be fitted at the next higher stage in the pay scale and thereafter.

Demand No. IV : *Seniority Increments:* It is demanded that after fitment,each workman shall be eligible to seniority increments on the following basis, depending on the number of years of service.

Those who have completed 1 year of service, 1 increment.
Those who have completed 4 years of service, 2 increments.
Those who have completed 8 years of service, 3 increments.
Those with 12 years of service 4 increments.
Those with 16 years of service 5 increments.

Those with 20 years of service 6 increments.

Demand No. V : *Fixed Dearness Allowance:* It is demanded that each of the work persons in M/s M.S.B. Caculo, Panaji, shall be paid a F.D.A. @ 20% on the total basic salary w.e.f. 1st July, 1985.

Demand No. VI : *Variable Dearness Allowance:* It is demanded that each of the workperson in M/s M. S. B. Caculo, Panaji shall be paid VDA on the All India Consumer Price Index 500 (1060=10) points 500 at the rate of 2/- rupees shall be paid to each workperson, per month beginning from July, 1985.

Demand No. VII : *House Rent Allowance:* It is demanded that each workperson in M/s M.S.B. Caculo, Panaji, Goa shall be paid HRA at the rate of 10% on the basic monthly salary w.e.f. 1st July, 1985.

Demand No. VIII : *Travelling Allowance:* It is demanded that each workperson in M/s M. B. S. Caculo, Panaji Goa shall be paid a travelling Allowance at the rate of Rs.2/- per day w.e.f. 1-7-1985.

Demand No. IX : *Washing Allowance:* It is demanded that each workperson in M/s M.S.B. Caculo, Panaji shall be paid a washing allowance at the rate of Rs. 25/- per month w.e.f. 1-7-1985.

Demand No. X : *Leave Travel Allowance:* It is demanded that each work person in M/s M.S.B. Caculo, Panaji shall be paid LTA at the rate of Rs. 300 per year.

Demand No. XI : *Bhatta:* It is demanded that those work persons who are required to go out on work such as Drivers, and other mobile staff shall be paid Bhatta on the following rates:

a) Inside Goa ..... Rs. 10/- per day
b) Outside Goa .... Rs. 30/- per day with the benefit of double O. T. for work rendered beyond normal 8 hours; a Lodging expenditure if sent outside Goa or in such special circumstances or cases.

Demand No. XII : *Night Shift Allowance:* It is demanded that those workpersons who are required to work in shifts shall be paid shift allowances for the following basis.

IInd shift ..... Rs. 3/-
IIIrd shift ..... Rs. 5/- plus milk or coffee.

Demand No. XIII : *Festival Advance:* It is demanded that each workperson shall be paid one full salary as festival advance, to be deducted in 10 equal monthly instalments.

Demand No. XIV : *Loan Facility:* It is demanded that each workperson should be eligible during the subsistance of these settlements, for a one time loan of Rs. 4000/- without being charged any interest and to be deducted in 40 easy instalments.

Demand No. XVI : *Change in Timing:* It is demanded that the workers in M/s M.S.B. Caculo, Panaji, Goa, excepting those with shift working, should be enjoined upon to work under the following timings; 09.00 hrs. to 17.00 hrs. with one hour lunch break, and introduce a five day week w.e.f. 1-8-85.

Demand No. XVIII : *Leave Facilities:* it is demanded that each workperson in the management of M/s M. S. B. Caculo, Panaji Goa shall be eligible to the following leave facilities:

Privilege leave ...	30 days per annum with the benefit to accumulate upto 90 days.
Casual leave ...	7 days with no accumulation.
Sick leave ...	10 days with the benefit to accumulate upto 30 days.
Holidays ...	14 days per annum which should be paid for.

Demand No. XIX : *Uniforms, Safety Shoes, Rain Coats, Rain Shoes:* It is demanded that each workperson should be provided with three pairs of uniforms (once a year) Rain Coats, rain shoes (once in two years) and

one pair safety shoes once a year w.e.f. 1-8-85.

Demand No. XXII : *Allotment of Work as per Designation:* It is demanded that work should be allotted to the work person as per their designations & grade and harassment that is presently being meted out to the workperson should end.

Demand No. XXIII : *Discount & Credit on Goods brought from Caculos:* It is demanded that the existing practice of giving discount & credit on goods brought by the workman from the house of Caculo's should continue.

Demand No. XXIV : *Rest Rooms & Lockers:* it is demanded that each workperson should be allotted a locker to store his/her personal belongings and there should be properly maintained rest rooms and lunch rooms in all the establishments.

If not, to what reliefs the workmen are entitled to ?"

5. Whether Employer/Party II proves that they do not have the capacity to pay for the increased demands and that their wage structure is higher and on a better level, compared to the wage structure of similar concerns ?

6. If so, whether the action of the management in refusing to concede the demands as listed in the Schedule is just and legal ?

7. If the answer on the above issue is in the negative, to what relief by way of revisions of pay scales and grant of other demands are the workmen entitled to ?

5. My findings on the issues are as follows:—

Issue No. 1 : —In the negative.
Issue No. 2 : —In the negative.
Issue No. 3 : —In the negative.
Issue No. 4 : —In the negative.
Issue No. 5 : —In the affirmative as far as financial capacity is concerned. In the negative as far as wage structure is concerned.
Issue No. 6 : —In the affirmative.
Issue No. 7 : —Workmen are not entitled to any relief.

REASONS

6. *Issue No. 1 to 4:*- All these issues are taken up together as they are inter related and the burden was on the union to prove the said issues. The records show that the union was given several opportunities to lead evidence in the matter. However, inspite of the opportunities given, no evidence was led by the union. On 31-10-96, Shri Subhash Naik representing the union stated that he was closing the evidence of the union and consequently, the union's evidence was closed on that day. Therefore, there is no evidence from the union in support of the demands raised against the employer. The burden was on the union to prove the issues Nos. 1 to 4. However the union has failed to discharge this burden. In the present case, the dispute as regards the demands was raised by the union on behalf of the workmen and the reference was made by the Government at the instance of the union. The contention of the union is that the demands are legal and justified. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engineering Services V/s Industrial Tribunal, Goa, Daman & Diu and another reported in F. J. R. Vol. 71 at page 393 has held that he who approaches a Court for a relief should prove his case and if he does not lead evidence must fail. The High Court has further held that the party who raises the industrial dispute is bound to prove the contention raised by him. I have already stated that in the present case, the union has not led any evidence at all in support of the demands and the contentions raised by it. Therefore, applying the law laid down by the Bombay High Court in the case of V. N. S. Engineering services (supra) and in the absence of any evidence from the union, the issue Nos. 1 to 4 cannot be answered in favour of the union. I therefore, hold that the union has failed to prove the issue Nos. 1 to 4 and hence I answer the said issues in the negative.

7. *Issue Nos. 5 and 6:*— It is a settled law that financial position of the employer is one of the main factors which is to be considered for granting the demands of the workmen. In the present case, the employer has taken the defence that its financial position is not sound so as to take the additional burden. The employer has examined one witness namely its Chief Accountant Mr. Sripad Devari. He has stated that the employer is a partnership firm registered under the Partnership Act. He has stated that the partnership was entered into the year 1969 and he has produced the copy of the partnership deed at Exb. E-1. He has stated that the employer firm deals in the business of sale of various types of oil manufactured by castrol company, refrigerators, furnitures, electrical and domestic appliances etc. and that it is registered under the Shops and Establishments Act, Provident Fund Act, ESI Act, Sales Tax Act and is also having a Permanent Account with the Income Tax Department. He has stated that the employer firm has no connection whatsoever with M/s M. S. B. Caculo Pvt. Ltd., M/s M. S. B. Caculo & Associates, M/s Metal Supply & Grills Stores, M/s Caculo Nets Pvt. Ltd., and M/s Manoj Electronics. The above statements of the witness have not been challenged or disputed in his cross examination. The witness Shri Devari has stated that on account of competitive business in the market, the employer's business does

not run smoothly. He produced the final accounts of the employer for the year ending 31-3-83, 31-3-85, 31-3-86 at Exb. E-2, E-3 and E-4 respectively. He has stated that the final account for the year ending 31-3-85 shows the net profit and other figures for the year ending 31-3-84. He has stated that for the year ending 31-3-83, the net profits was Rs. 1,06,009.28; for the year ending 31-3-84 the net profit was Rs. 64,058.61; for the year ending 31-3-85 the net profit was Rs. 74,495.54 and for the year ending 31-3-86 the net profit was Rs. 24,135.06. The above statement of the witness Shri Devari are supported by the final accounts produced at Exb. E-2 to E-4. The union has neither disputed the above statements of the said witness in his cross-examination nor has challenged or disputed the final accounts produced by him. In fact witness Shri Devari has not been cross examined at all on the financial position of the employer firm. From the above evidence of the employer and mainly the final accounts produced, it is evident that the profit of the employer was going down and the financial position was not good for the period from 1985 to 1986. The witness Shri Devari has stated that after the demands were raised by the union, he worked out the said demands as per the said demands, an overall increase of Rs. 700/- in the salary of a workers was demanded in cash, in additional to the other benefits such as bhatta, T. A. interest free loan, purchases of articles from employer at concessional rates etc. He has further stated that if all the demands of the union were met, the employer would have to pay additional amount of Rs. 2,50,000/- per annum, over and above the wages which being paid to the workers. He has stated that if the employer had met the demands of the union by 25% the additional financial burden on the employer would have been about 65,000/- per year and the employer would have suffered loss. All the above statement of the witness Shri Devari have gone un-challenged in his cross examination. There is no challenge at all to the above statements of the witness. The evidence on record produced by the employer on the financial position shows that its financial position during the period 1983 to 1986 was not good and its profit had gone down considerably. I am therefore of the view that the employer has succeeded in proving that it did not have the financial capacity to meet the demands of the union and hence the employer was justified in refusing to concede the demands of the union. The employer had contended that the wages paid to the workers are higher and on better level then those paid by similar concerns. However no evidence whatsoever has been led by the employer to support this contention. I therefore hold that the employer has failed to prove that its wages structure is higher and on a better level compared to the wage structure of similar concerns. In the circumstances, I answer the issue Nos. 5 and 6 accordingly.

8. *Issue No. 7:* While deciding the issue Nos. 1 to 4, I have held that the union has failed to prove that the demands raised against the employer are reasonable or that they are legal and justified. In view of the absence of any evidence from the union, I have decided the issue Nos. 1 to 4 against the union. I have also held that the employer was justified in refusing to concede to the demands of the union. In the course of arguments, Shri Subhash Naik, representing the union submitted that the workers should be paid at least minimum wages. In my view, the union is not entitled to make this submission. Firstly because, there is no pleading in the statement of claim filed by the union as regards payment of minimum wages to the workmen and secondly because, no issue has been framed in this respect. Besides, the witness Shri Devari denied the suggestion put to him in his cross examination that the workers were being paid or are paid less than the minimum wages. Except for putting the suggestion, no evidence whatsoever has been led by the union on this aspect. This being the case, the submission of Shri Naik that the workers should be paid minimum wages, does not survive. In the circumstances, I hold that the workmen are not entitled to any relief and hence I answer the issue accordingly.

I therefore, pass the following order.

ORDER

It is hereby held that the action of the management of M/s M. S. B. Caculo, St. Inez, Panaji Goa, in refusing to concede the demands listed in the schedule of the workmen represented through Goa Trade & Commercial Workers Union is legal and justified. It is hereby held that the workmen are not entitled to any relief.

No order as to costs.

Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

CL/Pub-Awards/98/3956

The following Award dated 2-8-1999 in Reference No. IT/75/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner & Ex-Officio Joint Secretary (Labour).

Panaji, 16th August, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/75/94

Shri Dilip P. Dessai & 3 others,
House No. 189/B,
Sidhnagar, Gottom,
Cuncolim-Goa. — Workmen/Party I

v/s

M/s B. J. Caeiro,
P B Dealer,
Cuncolim-Goa. — Employer/Party II

Workman/Party I-Represented by Adv. Shri P. J. Kamat.
Employer/Party II-Represented by Adv. Shri G. K. Sardessai.

Dated: 2-8-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Governor of Goa, by order dated 21-12-93 bearing No. 28/61/93-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s B. J. Caeiro, P B Dealer, Cuncolim, in terminating the services of the following workmen is legal and justified.

(1) Shri Dilip P. Dessai, Clerk, with effect from 8-2-1993.

(2) Shri Felix M. Fernandes, Salesman, with effect from 11-6-1992.

(3) Shri Rezinto Pedro Fernands, Helper, with effect from 8-2-1993.

(4) Shri Shaikh Dastigir Kassim, Salesman, with effect from 8-2-1993.

If not, to what relief the above workmen are entitled ?"

2. On receipt of the reference a case was registered under No. IT/75/92 and registered A/D notice was issued to the parties. The workmen Shri Dilip Dessai, Shri Felix M. Fernandes and Shri Rozario Pedro Fernandes were duly served with the notice and were represented by Adv. Shri P. J. Kamat. The registered A/D notice issued to the workman Shri Shaikh Dastagir Kassim was returned unserved with the remark that the said workman had left the place. The said notice was sent to him on the address mentioned in the order of reference, and since the notice was returned unserved no statement of claim came to be filed on his behalf and the case was proceeded in his absence. The Employer/Party II was duly served and was represented by Adv. Shri G. K. Sardessai.

3. The workmen Shri Dilip Dessai, Shri Felix M. Fernandes Shri Rozario Pedro Fernandes, (for short, "Workmen") filed their statement of claim at Exb.5. The facts of the case in brief as pleased by the workmen are that the workman Shri Dilip Dessai was appointed as a clerk by the Employer/Party II (for short, "employer") from 10-12-94 and his last draw salary was Rs. 620/- p.m., the workman Shri Felix Fernandes was appointed as a Salesman from 23-1-78 and his last draw salary was Rs. 550/- p.m., the workman Shri Rezinto Fernandes was appointed as a helper from 1-2-89 and his last drawn salary was Rs. 350/- p.m., and the workman Shri Shaikh Dastagir Kassim was appointed as a Salesman from 1-4-89 and his last drawn salary was Rs. 500/- p.m. That the employer terminated the services of the workman Shri Felix Fernandes from 11-6-92 by refusing employment to him and thereafter terminated the services of the other three workmen from 8-2-93. That workmen contended that termination of their service by the employer is in violation of the provisions of the Shops and Establishments Act as well as of the Industrial Disputes Act, 1947. That the workmen raised dispute before the Dy. Labour Commissioner, Margao and in the conciliation proceedings the employer took the defence that the workmen had abandoned their services. The workmen contended that abandonment of service amounts to "retrenchment" and since the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947, the termination is illegal and unjustified. The workmen therefore claimed that they are entitled to reinstatement in service with full back wages.

4. The employer filed written statement at Exb.7. The employer stated that as far as the workmen Shri Felix Fernandes, Shri Rezinto Fernandes and Shri Shaikh D. Kassim are concerned, they did not make any demand on the employer and hence no industrial dispute existed at the time when the reference was made. The employer denied that the services of the workmen were terminated and stated that the workmen had abandoned their services. The employer stated that the workman Shri Dilip Desai was employed from January 1992 on monthly wages of Rs. 450/- and he voluntarily abandoned his services from 8-2-93. With reference to the workman Shri Felix Fernandes, the employer stated that he was employed as a helper from January 1992 on monthly wages of Rs. 400/- and he voluntarily abandoned his services from 11-6-92. With reference to the workman Shri Rezinto Fernandes and Shri Shaikh Kassim, the employer stated that they were employed as helpers from January 1992 and their last drawn salary was Rs. 350/- p. m. The employer denied that their services were terminated, and stated that the workmen had

abandoned their services and had failed to resume their duties inspite of the request made. The employer stated that the provisions of Shops & Establishments Act and Sec. 25 F of the Industrial Disputes Act, 1947 are not applicable to the present case as the workmen had abandoned their services and there was no termination of service. The employer denied that the workmen are entitled to reinstatement in service or for any other reliefs as claimed. Thereafter the workmen filed rejoinder at Exb.8.

5. On the pleadings of the parties following issues were framed at Exb.9.

1. Whether Party I proves that Mr. Dilip Dessai was appointed as a clerk from 19-12-74 and his last drawn salary was Rs. 620/- p.m., Mr. Felix Fernandes was appointed as a Salesman from 23-1-78 and his last drawn salary was Rs. 550/- p.m.; Mr. Rezinto Pedro Fernandes was appointed as a helper from 1-2-89 and his last drawn salary was Rs. 350/- p.m. and Mr. Shaikh Dashigir was appointed as a Salesman from 1-4-89 and his drawn salary was Rs. 500/- per month ?

2. Whether Party I proves that the Party II did not comply with the provisions of Goa, Daman and Diu Shops and Establishments Act, 1973 and the rules made thereunder as also of Sec. 25 F of the I. D. Act, 1947 and hence the termination of services of the Party I/Workmen by the Party II is illegal ?

3. Whether Party I proves that the action of Party II in terminating the services of Party I/Workmen with effect from respective dates is illegal and unjustified ?

4. Whether Party II proves that it is not an 'Industry' as defined under Industrial Disputes Act, 1947 and hence the reference is null and void ?

5. Whether Party II proves that the reference in respect of the workmen Mr. Felix Fernandes, Mr. Rezinto Pedro Fernandes and Mr. Shaikh Kassim is not maintainable as there is no demand ?

6. Whether the Party II proves that the reference is null and void for non application of mind as the Party II has not terminated the services of the workmen but they have voluntarily abandoned their services ?

7. Whether Party I is entitled to any relief ?

8. What Award ?

6. My finding on the issues are as follows:

Issue No. 1 : In the affirmative
Issue No. 2 : In the affirmative
Issue No. 3 : In the affirmative with respect to the workmen Shri Dilip Desai, Shri Felix Fernandes and Shri Rezinto Fernandes. In the negative with respect to the workman Shri Shaikh Dastagir Kassim.
Issue No. 4 : In the negative.
Issue No. 5 : In the negative.
Issue No. 6 : In the negative.
Issue No. 7 : As per para. 16 below.
Issue No. 8 : As per order below.

Before I proceed to give my findings on issue Nos. 1, 2 and 3, I propose to give my findings on issue Nos. 4, 5 and 6 as they touch the maintainability of the reference.

REASONS

7. *Issue No. 4:* The dispute or the difference to fall within the perview of the Act must be "industrial" that is, it must relate to "industry" as defined in Sec. 2(J) of the Act. A dispute between the parties who do not constitute industry within the meaning of the Act is not an industrial dispute within the meaning of Sec. 2(k) of the Industrial Disputes Act. In the present case the employer contended in the written statement that the employer's establishment is not an industry and hence the reference made by the Government is null and void. Therefore the above issue was framed casting the burden on the employer to prove that it is not an "industry" and hence the reference is null and void. The employer has not led any evidence on this issue. The employer even did not suggest to any of the witnesses of the workmen that the employer is not an industry and hence reference is not maintainable. The employer examined Mr. B.J.Caeiro as its witness. In his deposition also the said witness did not bring in any evidence to show that the employer is not an industry. Infact the said witness did not dispute that the employer is an industry nor stated that the employer is not an industry and that therefore the reference is null and void. The Bombay High Court in the case of R.M. Nerlekar v/s Chief Commercial Superintendent, Central Railway, Bombay, reported in 1991 II CLR 789 has held that it is a trite law that a party who sets up a defence of ouster of the jurisdiction of a Tribunal must prove the material requisite for supporting such a plea. In that case the respondents had taken the defence that the applicants were not workmen within the meaning of Sec. 2(8) of the Industrial Disputes Act, 1947. The Bombay High Court held that the burden lay upon the respondents to satisfy the Labour Court on cogent material that the applicants were not workmen. In the present case the employer wanted to oust the jurisdiction of this Tribunal by setting up the defence that the employer is not an industry and that therefore the reference is bad in law. Applying the law laid down by the Bombay High Court in the above case the burden was on the employer to produce cogent material to satisfy this Tribunal that the employer is not an "industry" within the meaning of Sec. 2(J) of the Act. However, as stated above the employer has not produced any evidence in support of its plea and thus has totally failed to discharge the burden cast on it. In the absence of any evidence from

the employer this issue cannot be answered in its favour. I therefore hold that the employer has failed to prove that it is not an "industry" as defined in Sec. 2(J) of the Industrial Disputes Act" 1947 and hence I answer the issue No. 4 in the negative.

8. *Issue No. 5:* It is the contention of the employer that the reference in respect of the workmen Shri Felix Femandes, Shri Rezinto Fernandes and Shri Shaikh Dastagir Kassim is not maintainable because no demand was made by them against the employer. Adv. Shri Sardessai, the learned Advocate for the employer submitted that the failure report produced by the workmen at Exb. W-4 is only as regards the workman Shri Dilip Desai and not other workmen. He submitted that no conciliation proceedings was held on 4.10.93 in respect of the workmen Shri Felix Fernandes, Shri Rezinto Fernandes and Shri Shaikh Dastagir Kassim wherein the employer participated as contended by the workmen.

The workmen have produced the failure report dated 22.10.93 at Exb. W-5. The said failure report states that the workmen Mr. Dilip Desai, Shri Felix Fenandes, Shri Rezinto Fernandes and Shri Shaikh Dastagir Kassim had raised the dispute vide representation dated 17.2.93 as regards of their service and that their demand was that they should be reinstated in service with full back wages and continuity in service. The said report states that the employer was called for discussion and that in the course of the conciliation proceedings the employer took the defence that the services of the workmen were not terminated but they abandoned their services. Therefore the employer was aware about the nature of the dispute raised by the workmen and that their demand was that they should be reinstated in service with full back wages and continuity in service. Even if it is presumed that there was no direct demand on the employer from the workmen, it has been held by the Himachal Pradesh High Court in the case of M/s Village Papers Pvt. Ltd., v/s State of Himachal Pradesh and Others reported in 1993 Lab. 99 that a demand can be made through the Conciliation Officer who can forward it to the management and seek its reaction and if the reaction is negative and not forthcoming and the parties remain at logger-heads, a dispute exists and a reference can be made. As stated earlier, in the present case the failure report Exb. W-5 shows that the workmen had made the representation dated 17.2.1993 to the Conciliation Officer as regards termination of their service and the employer was called for discussion. The documents produced at Exb. W-4, W-5 and E-1 colly show that the employer had participated in the conciliation proceedings and ultimately the conciliation ended in a failure. Therefore there is no substance in the contention of the employer that the reference in respect of the workmen Mr. Felix Fernandes, Mr. Rezinto Fernandes and Mr. Shaikh Dastagir Kassim is not maintainable. There is also no substance in the contention of Adv. Shri Sardessai that the failure report Exb. W -4 is only in respect of the workmen Shri Dilip Desai and not other workmen. His contention is that no conciliation proceedings was held on 4-10-93 as referred to in the failure report. This contention of Adv. Sardessai is also incorrect. Exb. W-4 is the minutes of the meeting held by the Dy. Labour Commissioner/Conciliation Officer, Margao, dated 30-7-93 wherein failure is recorded in respect of the workman Mr. Dilip Dessai. According to Adv. Sardessai no conciliation proceedings were held on 4-10-93. However, the employer's witness Mr. B. J. Caeiro has admitted in his cross examination that he attended the proceedings before the Dy. Labour Commissioner on 4-10-93. He has identified his signature on the conciliation proceedings sheet dated 4-10-93 at point 'A'. The said proceeding sheet is produced at Exb. E-1 colly. This proves that the employer had attended the conciliation proceedings held on 4-10-93. On that day the workmen Mr. Felix Fernandes and Mr. Rezinto Fernandes had attended the proceedings, as can be seen from the proceedings sheet of 4-10-93. The Dy. Labour Commissioner/Conciliation Officer recorded the failure of conciliation proceedings. The failure report dated 22-10-93 Exb. W-5 has been sent by the Conciliation Officer subsequent to the proceedings on 30-7-93 and 4-10-93 as stated above. In the light of what is discussed above, I hold that the employer has failed to prove that the reference is not maintainable. In the circumstances I answer the issue No. 5 in the negative.

9. *Issue No. 6:* It is the contention of the employer that the reference is null and void because of non-application of mind as the employer has not terminated the services of the workmen but they have abandoned their services. I do not find any substance in this contention of the employer .The reference is made by the Govermnent on the basis of the dispute which is raised by the workmen. In the present case the Govetmnent referred the issue of termination of service because the workmen raised the dispute that the employer terminated their services illegally .The defence of abandonment of service is raised by the employer. Merely because the issue of abandonment of service also is not referred in the order of reference, the reference does not become null and void. The Supreme Court in the case of Delhi Cloth and General Mills Company Ltd., v/s The Workmen reported in AIR 1967 SC 469, in para 18 of its judgement held as follows.

> "In our opinion, the Tribunal must in any event look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out. Therefore the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act, but the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute

was some thing else. Under Sec. 10(4) of the Act it is not competent to the Tribunal to entertain such a question."

The Bombay High Court in the case of Sheshrao Bhaduji Hatwar v/s Presiding Officer, First Labour Court & Others, reported in 1992 II CLR 726 in para. 7 of its Judgement has held that mere wording of the reference is not decisive in the matter of tenability of a reference. The High Court held that if points of difference are discernible from the material before the Court of Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wordings of the reference. In para. 5 of the judgement the High Court has held that many times the reference is cryptic and vague and is not properly worded and some times it is not even possible to mention therein the defence of the other party. The High Court held that in such cases it is the duty of the adjudicating authority to examine the pleadings, documents etc., and to locate the exact nature of dispute. In view of the above decision of the Supreme Court and the Bombay High Court there is no substance in the contention of the employer that the reference is null and void. It is for the Tribunal to find out whether it is a case of termination of service of the workmen or it is the case of abandonment of service as contended by the employer. I therefore hold that the employer has failed to prove that the reference is null and void for non application of mind. In the circumstances, I answer the issue No.6 in the negative.

10. *Issue No. 1:* In the present case the workmen Shri Dilip Desai, Shri Felix M. Fernandes and Shri Rezinto Pedro Fernandes have examined themselves. As stated earlier the case in respect of the workman Shri Shaikh Dastagir Kassim was proceeded in his absence. There is no statement of claim on his behalf nor his deposition is on record. The workman Shri Dilip Desai has stated in his deposition that he was employed with the employer as a clerk on 19-12-74 and he has produced the letter of appointment at Exb. W-1. He has stated that the letter of appointment is in his handwriting and he has identified the signature of the employer Shri B. J. Caeiro and that of his on the said appointment letter. He has also produced the appointment letters of the workmen Shri Felix Fernandes and Shri Rezinto Femandes, at Exb. W-2 colly. He has stated that the said letters of appointment are in his handwriting and he has identified the signature of the employer Shri B. J. Caeiro and that of the workman on the said letters. The workmen Shri Felix Femandes and Shri Rezinto Fernandes who have examined themselves have corroborated the above statements of the workman Shri Dilip Desai. When the letters of appointment Exb. W-2 colly were shown to them they also identified their signature and that of the employer Shri B. J. Caeiro on the said letters. The appointment letter of the workman Shri Dilip Dessai, Exb. W -1 shows that he was appointed as a clerk with effect from 19th December 1974. The appointment letter of the workman Shri Felix Fernandes, Exb. W-2 colly shows that he was appointed as a salesman with effect from 23rd January 1978 and the appointment letter of the workman Shri Rezinto Fernandes, Exb. W-2 colly shows that he was appointed as a helper with effect from lst February 1989. As far as the appointment letters Exb. W-1 and W-2 colly are concerned, the defence which has been set up by the employer is that the signature of Shri B. J. Caeiro on the said letters is forged. With reference to this defence the suggestions which are put to the workmen in their cross-examination are contradictory. In the cross-examination of the workman Shri Dilip Desai, it was suggested to him that he has forged the signature of Shri B. J. Caeiro on the appointment letters Exb. W-l and W-2 colly which he denied. In the cross- examination of the workman Shri Felix Fernandes, it was suggested to him that no letter of appointment was issued to him and that he has forged the signature of Mr .B .J. Caeiro on the letter of appointment Exb. W-2 colly which he denied. Same suggestion was put to the workman Shri Rezinto Fernandes also and he denied the same suggestion. However, the employer in its evidence took completely different stand on the aspect of forgery of the signature on the letters of appointment. The employer examined Shri B.J. Caeiro as its witness. His evidence was recorded through the Commissioner as he was reported to be sick. Infact if it is the case of the employer that signature of Shri Caeiro is forged on the letters of appointment, he ought to have stated so in his examination in chief itself because the said letters of appointment were already produced by the workmen and they were on record as Exb. W-1 and W-2 colly. But he did not utter a single word about the same in his examination in chief. However, in his cross examination when the letter of appointment Exb. W-l was shown to him he first admitted his signature marked at point 'A' but thereafter stated that it is not his signature and that it is forged. He did not state who has forged his signature. In his cross examination he identified his signature on the written statement marked at point 'A' but he denied his signature marked at point C below verification on the written statement. He has further stated in his cross that he has not made any statement or signed any statement before any authority except Dy. Labour Commissioner Margao. In view of the above facts and more particularly in view of the contradictory suggestions put the workmen in their cross examination it is difficult to accept the contention of the employer that the signature of Mr. B. J. Caeiro is forged on the appointment letters. It is pertinent to note that initially Mr. B. J. Caeiro admitted his signature on the appointment letter Exb. W-1 but thereafter changed his mind and denied the said signature as he must have realised that he made a mistake in admitting his signature. In the circumstances I do not accept the contention of the employer that the signature of Mr. B. J. Caeiro is forged on the appointment letters Exb. W-1 and W- 2 colly. I have no reason to disbelieve the contention of the workmen that the said appointment letters are issued by the employer.

11. The appointment letter Exb. W-1 shows that workman Shri Dilip Desai was appointed as a clerk with effect ftom 19-12-74, and the appointment letter Exb. W-2 colly show that workman Shri Felix Femandes was appointed as a Salesman with effect from 23-1-1978 and the workman Shri Rezinto Fernandes was appointed as a helper with effect from 1-2-1989. The workman Shri Dilip Desai has stated in his deposition that his last drawn salary was Rs. 620/- p. m. In support of his this contention he has produced his wage slip for the month of January 1993 at Exb. W-3. In his cross examination he has stated that he was being issued wage slips even prior to January 1993 and that he is in a position to produce the said wage slips. However, Adv. Shri Naik, the learned Advocate for the employer submitted that he is not insisting on the production of the wage slips prior to January 1993. The wage slip produced at Exb. W-3 was not challenged by the employer in the cross-examination of the said witness. It was only suggested to him that his last drawn salary was Rs. 450/- p.m., which suggestion he denied. The employer could have produced the wage register or any other document or evidence to show that the last drawn wage of the workman Shri Dilip Desai was Rs. 450/- p.m. But no such document was produced. Therefore from the documentary evidence produced by the workman Shri Dilip Desai it is proved that his last drawn salary was Rs. 620/- p.m. The workman Shri Felix Fernandes stated in his deposition that his last drawn salary was Rs. 550/- p.m. He has not produced any documentary evidence to prove his this contention. He denied the suggestion put to him in his cross examination that his last drawn salary was Rs. 400/- p.m. The workman Shri Rezinto Femandes stated in his deposition that his last drawn salary was Rs.350/-. In his cross examination no suggestion was put to him denying that his last drawn salary was Rs. 350/- p.m. The employer's witness Shri B. J. Caeiro in his cross examination has admitted that the employer's establishment i.e The Petrol Pump is registered under the Goa, Daman and Diu Shops and Establishments Act, and the registration number is 437. As per the provisions of the Shops and Establishments Act the employer is duty bound to maintain Attendance Register and wage register. The workmen had filed an application dated 11th July 1995 at Exb.12 for directing the employer to produce the attendance registers, wage registers and some other documents. The employer filed reply dated 12-9-93 at Exb. 13 stating that the said documents are destroyed and as such the employer is unable to produce the said documents. However.the employer in its evidence took completely different defence. The employer's witness Shri B. J. Caeiro stated in his cross examination that the attendance registers and wage registers were taken away by the last two workmen i.e. Shri Felix Fernandes and Shri Rezinto Fernandes. But the next moment he said he does not know who exactly took them away. It is also pertinent to note that the witness Shri Caeiro has not stated as to when the said registers and other documents were taken away by the workmen. If it was really so, the employer would have definitely stated so in the reply to the application for the production of document which was the first available opportunity to the employer, and would not have stated that they are destroyed. Therefore the only reasonable inference which can be drawn is that the employer has deliberately not produced the said documents because they would help the workmen. In the light of what is discussed above, I hold that the workmen have succeeded in proving that the workman Shri Dilip Desai was appointed as a clerk from 10-12-74 and his last drawn salary was Rs. 620/- p.m.; the workman Shri Felix Fernandes was appointed as a Salesman from 23-1-78 and his last drawn salary was Rs. 550/- p.m and the workman Shri Rezinto Femandes was appointed as a helper from 1-2-89 and his last drawn salary was Rs.350/- p.m. Since there is no evidence whatsoever from the workman Shri Shaikh Dastagir, I hold that the workmen have failed to prove that Shri Shaikh Dastagir was appointed as a Salesman from 1-4-89 and that his last drawn salary was Rs. 500/- p.m. However, the employer's witness Shri B. J. Caeiro has stated in his deposition that Shri Shaikh Dastagir was appointed as a helper since January 1992 and his salary was Rs.350/- p.m. In view of this admission on the part of the employer I hold that the workman Shri Shaikh Dastagir was appointed as a helper from January 1992 and his last drawn salary was Rs.350/- p.m. Hence, I answer the issue No.1 accordingly.

12. *Issue Nos. 2 and 3* : Both these issues are taken up together as they are inter-related. Since the workman Shri Shaikh Dastagir Kassim absented and did not participate in the proceedings the findings on the issue of termination of service is restricted only in respect of the workmen Shri Dilip Dessai, Shri Felix Fernandes and Shri Rezinto Fernandes. Adv. Shri Kamat, the learned Advocate for the workmen has submitted that since the employer took the defence that the workmen abandoned their services, the burden was on the employer to prove the abandonment, and the employer having failed to do so, it is established that the services of the workmen were terminated as contended by them. He submitted that the Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co. & Others reported in 1996 I CLR 172 has held that if the Labour Court finds that it is a word against the word, then the benefit should go to the workmen and not to the employer. He submitted that the Bombay High Court in the said case has also held that the burden is on the employer to prove voluntary abandonment of service. He has submitted that since the employer has failed to prove that the workmen abandoned their services, it means that the employer terminated their services in violation of the provisions of Sec. 39 of the Shops and Establishments Act as also the provisions of Sec. 25F of the Industrial Disputes Act, 1047 as the workmen had completed more than 240 days of service prior to the date of termination of their service. Adv. Shri Sardessai, the learned Advocate for the employer submitted on the other hand that the workman Shri Dilip Dessai has admitted in his cross examination that he did not write any letter to the employer that he should be taken back

in service which proves that the workman voluntarily abandoned his services. He submitted that the workmen have not proved the date of termination of their service.

13. The contention of the workmen is that the employer has terminated their services whereas the employer's contention is that the workmen have voluntarily abandoned their services. The workman Shri Dilip Desai has stated in his deposition that on 7-2-93 at about 8.00 p.m Mr. B. J. Caeiro told him, and to the workmen Mr. Rezinto Fernandes and Shaikh Kassim not to report for work from 8-2-93. In cross examination he stated that there were no written orders to that effect but they were told orally. He denied the suggestion that he left the services of his own from 8-2-93. The workman Mr. Rezinto Fernandes also has corroborated this fact in his deposition. He denied the suggestion put to him in his cross that he stopped reporting for work of his own from 8-2-93. The workman Mr. Felix Fernandes has stated in his deposition that on 10-6-92, Mr. B. J. Caeiro told him not to report for work from 11-6-92. In his cross examination he denied the suggestion that he did not report for work of his own. The contention of the workmen is that their services are terminated from the above dates and the employer has also admitted that from the said dates the workmen have not reported for work. Therefore there is no substance in the contention of the employer that the workmen have not proved the date of termination of their service. Now it is to be seen whether the employer has proved that the workmen have voluntarily abandoned their service from the respective dates mentioned above as it is the contention of the employer that the workmen have voluntarily abandoned their service. The Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co, & Ors. reported in 1996 I CLR 172 has held that the primary onus to lead evidence to prove voluntary abandonment of service is on the employer. The High Court has held that in the cases of voluntary abandonment of service it is a matter of intention which is to be drawn on given set of facts and the employer unilaterally cannot say that the workman is not interested in employment and that for this reason a domestic enquiry is required to be held. The High Court has further held that even before the Labour Court the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his service. In the present case admittedly the employer did not hold any domestic enquiry to prove that the workmen voluntarily abandoned their service. The employer has examined Shri B. J. Caeiro before this Tribunal in its defence. However, from his evidence it cannot be established that the workmen voluntarily abandoned their service. In the cross examination of the workmen it was suggested to them that Mr. Caeiro had sent a message asking them to report for work and that they did not do so and this suggestion was denied by the workmen. It is pertinent to note that the employer did not state as to how the message was sent or through whom it was sent. The person through whom the message is supposed to have been sent has not been examined. Another important factor to be considered is that Mr .Caeiro in his evidence never stated that he had sent any message to the workmen asking them to report for work and that they did not. He only made the statement that in the conciliation proceedings he had given offer to the workmen to take them back in service and that only the workman Shri Dilip Desai desired to come back and he agreed to take him back. But the suggestion which was put to the workman Shri Dilip Desai in his cross examination is contradictory to this statement of Mr. Caeiro. It was suggested to the workman Shri Dilip Desai that in the conciliation proceeding Adv. Shri Gomes the employer's representative had given the offer to him to join the services and that he did not accept the said offer. Besides no suggestion was put to the workmen Shri Rezinto Fernandes and Mr. Felix Femandes in their cross examination that such an offer was made to them in the conciliation proceedings and that they did not accept it. The minutes of the conciliation proceedings dated 30-7-93 and the failure report dated 22.10.93 are on record as Exb. W-4 and W-5 respectively. Both these documents do not show that any offer was made by the employer to the workmen for taking them back in service. These documents on the contrary show that the employer was not willing to take the workmen back in service because they had voluntarily abandoned their service. This is evident from the following contents in the failure report dated 22-10-93 Exb. W-5.

> "During the conciliation proceedings the employer's representative contended that all the workmen have voluntarily abandoned the service and they are not entitled to raise any claim."....

> "During the conciliation proceedings various proposal were exchanged between the parties to resolve the dispute amicably. As the parties stuck up to their stands, the dispute ended in failure."

14. From the above contents of the failure report reproduced hereinabove, it is clear that no offer was given to the workmen by the employer for taking them back in service as otherwise the same would have been mentioned in the failure report. In the minutes of the meeting dated 30-7-93 Exb. W-4 it is mentioned that the workman Shri Dilip Desai had contended that the employer should allow him to resume duty with continuity of service with full back wages and that the employer did not agree to the said contention of the workman. From the evidence which is discussed above the contention of the employer that the workmen were asked to report for work or that the offer was given to them of taking them back in service during the pendency of the conciliation proceedings cannot be believed. There is no evidence to that effect. The employer has sought to argue that the fact that the workman Shri Dilip Desai has admitted in his cross examination that he did not write any letter asking the employer to take him back in service proves that it is a case of

abandonment of service. This contention of the employer is not correct. As mentioned by me earlier the onus is on the employer to prove that the workman has abandoned his service. The workmen had raised the dispute about termination of their service by letter dated 17-2-93 and they had demanded that they should be taken back in service. If the workmen had voluntarily abandoned their services they would not have raised the dispute and made a demand for reinstating them in service. This clearly shows that the workmen had the intention to work with the employer. In the case of Mahamadshah Ganishah Patel & anr, v/s Mastanbaug Consumer's Coop. Wholesale & Retail Stores Ltd., & Anr. reported in 1998 I C/R 1205 the Bombay High Court has held that it is a settled law that even in the case of abandonment of service the employer has to give notice to the employee calling upon him to resume his duty and if the employee does not turn up despite such notice, the employer should hold enquiry on that ground and then pass appropriate order of termination. The High Court further held that at the time when the employment is scarce, ordinarily abandonment of service by an employee cannot be presumed. In the present case there is no evidence from the employer that notice was given to the workmen asking them to resume their duty. There is also no evidence that the employer conducted any enquiry. Therefore the employer has failed to discharge the burden by leading evidence that the workmen abandoned their service. Also, in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co. (supra) the Bombay High Court has held that if it is a case of word against word, then the benefit should go to the workman and not to the employer. In the present case, applying the above principles laid down by the Bombay High Court and in view of the facts discussed above, I do not find any reason to disbelieve the contention of the workmen that their services were terminated by the employer. In the circumstances I hold that the workmen did not voluntarily abandon their service but their services were terminated w.e.f. their respective dates.

15. Now the next question is whether the termination of the services of the workmen is illegal and unjustified. The contention of the workmen is that the termination is illegal because the employer did not comply with the provision of Sec. 39 of the Goa, Daman and Diu Shops and Establishments Act as also Sec. 25F of the Industrial Disputes Act, 1947. Mr. B. J. Caeiro, the employer, in his cross examination has admitted that his petrol pump is registered under Goa, Daman and Diu Shops and Establishments Act and bears registration No. 437. He has further admitted in his cross that he was maintaining the registers of wages and attendance as per the said Act. It is therefore obvious that the employer was governed by the provisions of the Shops and Establishments Act. Sec. 39 of the said Act lays down that services of an employee who has been in employment for not less than six months can be terminated only for a reasonable cause and misconduct and in that event he should be given one month's notice in writing or wages in lieu thereof and is to be paid gratuity amounting to fifteen days average wages for each year of continuous employment. In the present case admittedly the workmen were in service for more than six months and their services were not terminated for a reasonable cause and/or for misconduct. According to the employer it was a case of abandonment of service, which the employer failed to prove. In the circumstances the termination of service is in violation of Sec. 39 of the Shops and Establishments Act as rightly, contended by the workmen. The workmen have also contended that the termination of service is in violation of Sec. 25F of the Industrial Disputes Act 1947. This section applies when the termination of service amounts to retrenchment. Therefore it is to be seen whether in the present case it is a case of retrenchment Sec. 2(oo) of the Industrial Disputes Act, 1947 defines retrenchment as follows:

> (00) "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the service of a workman on the ground of continued ill-health"

In the present case it has been held by me that the services of the workmen were terminated and it was not the case of voluntary abandonment of service as claimed by the employer. There is no evidence that the services of the workmen were terminated as a matter of punishment by way of disciplinary action, nor the case of the workmen falls within the exceptions laid down in Sec. 2(oo) of the Industrial Disputes Act, 1947. Therefore the termination of the sevices of the workmen amounts to retrenchment. Sec. 25 F of the Industrial Disputes Act, 1947 lays down that a person who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. Sec. 25B(2) of the Industrial Disputes Act 1947 defines "continuous service". It states that a person shall be deemed to be

in continuous service under an employer for a period of one year if the workman during period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. Admittedly the workmen were not employed below ground in a mine. While deciding the issue No.1, I have held that the workman Shri Dilip Desai was appointed from 19-12-74; the workman Shri Felix Fernandes was appointed from 23-1-78 and the workman Shri Rezinto Fernandes was appointed from 1-2-89. It has been also held by me that the workman did not abandon their services but their services were terminated and the services of the workman Shri Dilip Desai and Shri Rezinto Fernandes were terminated with effect from 8-2-93 and that of Shri Felix Fernandes from 11-6-92. This means that the workmen had worked with the employer for more than 240 days during the period of 12 months preceding the date of termination of their service. Therefore the provisions of Sec. 25F are attracted to the workmen which lays down the procedure for valid retrenchment. There is no evidence that the workmen were given one month's notice or wages in lieu of one month's notice or were paid retrenchment compensation as required under Sec. 25F of the Industrial Disputes Act, 1947. Therefore the workmen have succeeded in proving that the employer did not comply with the provisions of Sec. 25F of the Industrial Disputes Act, while terminating their services. It is a settled law that complying with the provisions of Sec. 25F in case of retrenchment is mandatory. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd., v/s Industrial, Tribunal, Hariyana & Others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the provisions prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. This being the case of termination of Service of the workmen becomes illegal and in-operative. I, therefore, hold that the termination of service of the workmen Shri Dilip Desai, Shri Felix Fernandes and Shri Rezinto Femandes is in violation of the provisions of Sec. 39 of Goa, Daman and Diu Shops and Establishments Act, 1973 and Sec. 25 F of the Industrial Disputes Act, 1947 and hence it is illegal and unjustified. However, I hold that termination of services of the workman Shri Shaikh Dastagir Kassim is legal and justified as the case has proceeded in his absence and there is no evidence on his behalf. I, therefore answer the issue Nos. 2 and 3 accordingly.

16. *Issue No. 7:* Once it is held that the termination is illegal and unjustified the next question is what relief should be awarded to the workmen. The normal rule is that once the termination is held to be illegal and unjustified, the workman is entitled to reinstatement in service with full back wages, unless there are valid reasons for not doing so. In the present case there is no evidence on record to show that the past conduct of the workmen Shri Dilip Desai, Shri Felix Femandes and Shri Rezinto Fernandes was not good. Infact there is no evidence on the past conduct of the workmen. There is also nothing on record to show that the workmen were gainfully employed, after their services were terminated. Therefore, I do not find any reason to deviate from the normal rule that the workmen should be reinstated in service once it is held that the termination of service is illegal and unjustified. I am therefore of the view that in the present case the workmen are entitled to reinstatement in service with full back wages. In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s B. J. Caeiro, P. B. Dealer, Cuncolim, in terminating the services of the workmen (1) Shri Dilip P. Dessai, Clerk, with effect from 8-2-1993. (2) Shri Felix M. Fernandes, Salesman, with effect from 11-6-1992. (3) Shri Rezinto Pedro Fernandes, Helper, with effect from 8-2-1993 is illegal and unjustified. The said workmen are ordered to be reinstated in service with full back wages and all other consequential benefits. It is hereby further held that the termination of service of workman Shri Shaikh Dastigir Kassim, Salesman, with effect from 8-2-1993 is legal and justified and as such he is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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